

In Re: Snehasagar Charitable Trust

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Court : Kerala

Decided On : May-18-2010

Reported in : 2010(2)KLJ1037

Judge : P. Bhavadasan, J.

Acts : Indian Trust Act, 1882 - Section 34

Appeal No. : W.P. (C) No. 10680 of 2010

Appellant : In Re: Snehasagar Charitable Trust

Advocate for Pet/Ap. : N.M. Madhu and; C. Devikarani Kaimal, Advs.

Disposition : Petition allowed

Judgement :

P. Bhavadasan, J.

1. The prayer made in this Writ Petition is that permission be granted to the first petitioner Trust to sell an item of property for raising funds for construction of buildings.

2. The first petitioner is a charitable trust. Petitioners 2 to 11 are the trustees of the trust. The trust was constituted with the object of providing care and shelter to aged persons. An extent of 29.40 cents of property in Sy. No. 105/2 in Kuruvattoor

Amsom Payimbra Desom in Kozhikode Taluk was purchased by the trust for the purpose of constructing a building to run the old age home. The vendor of that property, attracted by the object of the trust, gifted a further extent of 5 cents adjoining to the 29.40 cents. This combined block of 34.4 cents is situate on the bank of a river and is very suitable and appropriate for running an old age home. But construction could not be started due to paucity of funds.

3. It appears that another well wisher of the trust namely, one Pokkanchery Swamikutty had bequeathed an extent of 33.07 cents in Re.Sy. Nos. 78/14 and 80/1 of Nellikode Amsom Desom in Kozhikode Taluk in favour of the trust. This property is within the Kozhikode town limits. The trustees formed an opinion that they can sell that property and utilize the funds obtained therefrom for purchasing further extent of 65.60 cents lying adjacent to the property held by the petitioner trust in Kuruvattoor amsom and utilize the balance for construction of the building.

4. With the above object in mind, the petitioners filed O.P. 271 of 2008 under Section 34 of the Indian Trust Act seeking permission of the court. The learned District Judge dismissed the petition. Hence aggrieved, the petitioners have come up with this Writ Petition.

5. Learned Counsel appearing for the petitioners pointed out that there was no justification on the part of the court below in dismissing the petition. All the trustees had joined in the petition and they had made the purpose of the sale very clear. Observation of the court below that it is not necessary to sell the property to acquire other items of property and construct a building is quite unfortunate. The court below has also observed that the trust deed does not show that the trustees can sell the property.

6. The petitioner trust had approached the court under Section 34 of the Indian Trust Act. In case the court is satisfied that the sale is for the benefit of the trust, permission can be granted or opinion can be expressed. In the case on hand, the trust had property at two places. It intends to run an old age home at one place. With that in mind, the trustees decided that it is better to sell the property in Kozhikode Town and buy an additional extent of 65.60 cents of land lying adjacent to the property already held by the petitioner in Kuruvattoor amsom. They have

also pointed out that they expect to get Rs. 1,50,000/- per cent. The trustees are hopeful that with the aforesaid amount they will have enough funds to put up buildings also.

7. One should remember that the very object of the trust itself is to run an old age home. Therefore constructions are absolutely necessary. It is not necessary that the trust deed should provide power to the trustees to sell the property. That is where the role of the court comes in. The court has to evaluate the entire facts and circumstances of the case and has to form an opinion that the attempt is not to deplete the assets of the trust, but the same is for the benefit of the trust. The petitioners have given details of the necessity to sell the property, and it is not as if they are not going to use the sale consideration effectively and for the benefit of the trust. There is no reason to doubt the motive of the trustees. There is no reason why the proposal should not be approved. In the result, this petition is allowed, the impugned order is set aside and the proposal to sell the property already mentioned is approved.

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